88-1927

Supreme Court, U.S.
FILED
MAY 12 1989
JOSEPH F. SPANIOL, JR.
CLERK

No._____

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1988

DONALD L. ERICKSON, *Petitioner,*

v.

CITY OF WEBSTER GROVES, *Respondent.*

PETITION FOR WRIT OF CERTIORARI FROM THE MISSOURI COURT OF APPEALS (E.D.)

JURISDICTIONAL STATEMENT

DONALD L. ERICKSON
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Webster Groves, MO 63119
(314) 961-0838
Pro Se

May 11, 1989

QUESTIONS PRESENTED

1

Whether a "nuisance" ordinance forbidding "unsightly" property which is an "annoyance" to "the public" is void for vagueness as applied in this case where Appellant reasonably relied on the prior holding of the Missouri Court of Appeals (Western District) that the words "unsightly" and "annoyance" were unconstitutionally vague in a similar "nuisance" ordinance.

2

Whether an ordinance, "revised" four months after the date Appellant allegedly violated it, was unconstitutional as applied in convicting Appellant of violating the ex post facto "revised" ordinance.

3

Whether using the subsequent ex post facto "revised" ordinance to impose a $300 fine on Appellant, when said ordinance allowed only a maximum fine of $100, made the ordinance unconstitutional as applied to Appellant.

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IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1988

DONALD L. ERICKSON, *Appellant,*

v.

CITY OF WEBSTER GROVES, *Appellee.*

ON APPEAL FROM THE MISSOURI COURT OF APPEALS, EASTERN DISTRICT

JURISDICTIONAL STATEMENT

Donald L. Erickson, the Appellant, appeals from the final judgment of the Missouri Court of Appeals (Eastern District) dated November 22, 1988, holding that municipal ordinances 31.010, 31. 080, and 31. 090, of the City of Webster Groves, enacted under the authority of enabling legislation by the State of Missouri, are not, as applied in this case, repugnant to the 14th amendment to the United States Constitution.

OPINIONS BELOW

The opinion of the Missouri Court of Appeals (Eastern District) affirms conviction of Appellant for violation of said Webster Groves ordinances. The opinion appears in the appendix hereto, pages 10-14, infra.

JURISDICTION

The opinion of the Missouri Court of Appeals (Eastern District) affirming Appellant's conviction was entered on November 22, 1988. A motion for transfer to the Missouri Supreme Court was entertained and denied on February 14, 1989, see appendix, Page 15, infra.

A supplementary notice of appeal to this court was timely filed in the Missouri Court of Appeals (Eastern District), and the Missouri Supreme Court on May 11, 1989.

This appeal is being docketed in this Court within 90 days from the denial of transfer below. The jurisdiction of the Court is being invoked under 28 U.S.C. § 1257 (2)

CONSTITUTIONAL PROVISIONS

Fourteenth Amendment, United States Constitution:

••••nor shall any State deprive any person of life, liberty, or property, without due process of law••••

HOW THE FEDERAL QUESTIONS WERE RAISED

Appellant was convicted of ordinance violation in Respondent's municipal court. Apellant applied for trial de novo and the case was then tried in state circuit court under state criminal misdemeanor rules.

At state criminal trial, Appellant asserted the ordinance was unconstitutionally vague as applied in Appellant's case.

On appeal, Appellant reasserted his void for vagueness claim and argued the ordinance was even more vague in light of *Independence v. Richards*, 666 SW2nd, 1 (Mo.App. 1983) in which the other state court of appeals (Western District) had previously held the exact same words in the exact same type of "nuisance" ordinance unconstitutionally vague. And that even if the state court of appeals (Eastern District) found the words not unconstitutionally vague, Appellant's conviction should be reversed because he had reasonably relied on the only existing on point Missouri case law as to whether or not the words were unconstitutionally vague. Therefore, the ordinance was clearly void for vagueness as applied to Appellant in this case.

On appeal, appellant also argued the unconstitutionality of convicting appellant for violating an ex post facto ordinance that evidence adduced at trial proved was not even an ordinance until four months **after** the date on which it was alleged Appellant had violated the ordinance.

On appeal, appellant also argued the imposition of a $300 fine was plain error when the ex post facto ordinance allowed a maximum fine of only $100.

STATEMENT OF THE CASE

On January 27, 1988, Appellant was tried and convicted at trial de novo of violating Respondent's "nuisance" ordinances on January 14, 1987. Respondent's evidence at state trial consisted of testimony by Respondent's code enforcement officer, Robert Baer, and a certified copy of Respondent's " nuisance" ordinances (Appendix, pages 16-18) . A certified copy of the ordinances was introduced at trial because Missouri law does not allow its circuit courts to take judicial notice of municipal ordinances. A certified copy must be introduced at trial showing the ordinances were in effect on the date of ordinance violation alleged *General Motors v. Fair Employment*, 574 SW2nd 394 (MO, en banc 1978).

The certification of Respondent's ordinances introduced at state trial (Appendix, page 19) did not swear the ordinances were in effect on January 14, 1987 (the date of ordinance violation charged by Respondent). Instead, the certification swore the ordinances were in effect on "January 27, 1988" (the date of state trial). The certification also swore that the ordinances introduced at trial were actually ordinances that had been "revised" in May of 1987, some four months **after** the date of ordinance violation charged at state trial.

On state appeal, Appellant argued that what ordinances were in effect on January 27, 1988 was no proof of what, if any, ordinances were in effect on January 14, 1987. But that the certification introduced by respondent at trial did prove the ordinances introduced at trial were actually ordinances that had been "revised" in May of 1987, some four months after the fact.

Respondent's reply brief on state appeal argued that Appellant failed to object to introduction of the certification at trial and, therefore, had waived any objection on appeal. But Appellant's motion for rehearing or transfer argued that Appellant did not object to such evidence at trial because Appellant had no objection. Appellant was pleased that Respondent had introduced evidence at trial that disproved a necessary element in respondent's prosecution of Appellant. Respondent's evidence that the ordinances introduced at trial were actually ordinances that had been "revised" four months after the ordinance violation date charged spoke for itself. And, under Missouri law (*General Motors,* supra), the trial court was **required** to accept as credible Respondent's own evidence that the ordinances introduced at trial were actually ordinances that had been "revised" after the fact.

THE QUESTION IS SUBSTANTIAL

The question is substantial because every American who owns a home in other than isolated rural areas is subject to

municipal "nuisance" ordinances. For millions of citizens municipal court will be their only contact ever with "the law." Appellant contends even the lowliest pro se defendant in the lowest municipal court should have the right to at least some minimal due process and fundamental fairness under the Constitution of the United States.

But when the state trial court convicted Appellant of violating an ordinance that didn't even exist on the date Appellant allegedly violated it, and then tripled the maximum fine allowed under the ex post facto "revised" ordinance, it improperly punished our Constitution far more than it improperly punished Appellant herein.

By accepting this case the Supreme Court would state clearly that, while considerable latitude is properly allowed municipal ordinances and state trial de novo and appellate courts, particularly egregious denials of simple due process and basic fundamental fairness to pro se criminal defendants are still subject to review by the Supreme Court, no matter how minor the underlying issue or the parties involved.

Further, because in many states a trial de novo on the record is tried under state criminal rules, such convictions result in a permanent criminal record, even if the offense is minor. Because municipal courts are not courts of record, but seeking a trial de novo adds the risk of a state criminal conviction, it appears especially important for the Supreme Court to impose minimal due process requirements for such trials de novo to protect pro se defendants who are only exercising their right to a trial on the record. In Appellant's case, he is now saddled with a permanent record of criminal conviction in state court.

If the price defendants must pay for a trial on the record is the risk of a permanent state criminal record, then such defendants must be afforded at least minimal due process and fundamental fairness at state trials de novo and throughout state appeals. Convicting Appellant of violating an ordinance that didn't exist on the date Appellant allegedly violated it,

and then imposing a fine three times the maximum allowed under the subsequent ex post facto "revised" ordinance, makes a joke of the Constitution of the United States.

It is difficult for ordinary citizens such as Appellant to respect the law when it blatantly violates its own rules. Appellant hopes the Supreme Court will take this case and thereby send a message to millions of ordinary citizens that constitutional guarentees of fundamental fairness are not just text book abstractions, but the living law of the land for every citizen in every municipality.

CONCLUSION

For these reasons, the Court should note probable jurisdiction of this appeal.

Or, in view of the gross conflict of the decision below with past decisions of this Court, the Court may wish to treat this appeal as an application for certiorari and may wish to consider summary reversal.

Respectfully submitted,

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Pro Se

In the Missouri Court of Appeals
Eastern District
division one

CITY OF WEBSTER GROVES,	)	NO. 54637
Plaintiff-respondent,	)	Appeal from the
	)	Circuit Court
vs.	)	of St. Louis County
	)	
DONALD L. ERICKSON	)	
Defendant-Appellant.	)	Hon. Susan Block
	)	
	)	OPINION FILED:
	)	November 22, 1988

Defendant appeals from his conviction by the court for violating public nuisance ordinances of the City of Webster Groves. [1] He was fined $300.00 We affirm.

The ordinances which apply to public nuisances are codified in Chapter 31 of the ordinances of the City of Webster Groves. Section 31.080 provides:

The owner of any premises, or his agent in control therof, as well as the tenant or occupant of such premise, is charged with the duty of observing all of the provisions of this Chapter. Any or all of such persons, together with any person causing or contributing to cause any nuisance, may be charged with violation thereof, and shall be equally liable. Webster Groves, Mo., Code. § 31.080 (1987)

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[1] Defendant had been found in violation by the municipal court and apealled to the circuit court where the case was heard de novo.

Defendant was charged as an owner. On November 1, 1985, defendant and buyers executed a "contract for deed" for property in the City of Webster Groves. Buyers took possession; defendant retained title. City, on December 30, 1986, inspected the property and determined that "broken concrete, tires, coardboard boxes" and other debris on the premises were a public nuisance under its ordinances. [2] On December 30, 1986, City sent a notice of violation to defendant by certified mail, return receipt requested. Defendant received the notice on January 9, 1987. City inspected the premises on January 14, 1987, and found the volume of debris had increased; "(t)here was, additionally, a washer and a dryer, and a considerable amount of auto parts, specifically tail pipes, mufflers, etcetera, scrap iron." Defendant was summoned to appear in municipal court. On the court date, February 19, 1987, City again inspected the premises and determined defendant was violating its public nuisance ordinances.

As his defense at trial and his main point on appeal, defendant argues he is not an "owner" as that word is used in City's public nuisance ordinances. He contends that under Senn v. Manchester Bank of St. Louis, 583 S.W.2nd 119 (Mo. banc 1979), and Fincher v. Miles, 549 S.W.2nd 848 (Mo. banc 1977), the "contract for deed" he and buyers executed made buyers the "true owners' of the premises and lefrt him merely a trustee holding bare legal title.

When we construe an ordinance we attempt to effect the intent of the lawmakers. In doing so, we give the words used their ordinary meaning, consider the entire act and its purposes, and seek to avoid unjust, absurd, unreasonable, confiscatory or opressive results. Suburbia Gardens Nursery, Inc. v. County of St. Louis, 377 S.W.2nd 266,271 (Mo. banc 1964).

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[2] The record reveals that buyers had been informed of the conditon of the premises by City before December 30, 1986.

Ordinance violation actions are quasi-criminal and, on review, we must sustain the judgment of the trial court unless there is no substantial evidence to support it when the evidence and reasonable inferences therefrom are viewed in the light most favorable to the city; we do not weigh the evidence. St. Louis County v. Ryan, 738 S.W.2nd 951, 952 (Mo. App. 1987).

We believe that "owner" as used in the ordinances includes any owner, legal or equitable, who has the right to control the premises so as to abate the nuisance thereon.

We disagree with defendant's ontention that the evidence does not support a finding that he was the owner of the property under the public nuisance ordinances of the City of Webster groves. The court had before it the "contract for deed." The contract provided for a total purchase price of $49,000.00 and contained the following sale provisions:

(The purchase price to be paid) in the following manner: Five Hundred and Thirteen Dollars and Twenty One Cents ($513.21) paid on execution of this agreement, receipt of which is hereby acknowledged, and the balance, together with interest at the rate of Twelve Percent (12%), to be paid in consecutive monthly installments of Five Hundred and Thirteen Dollars and Twenty One Cents ($513.21) commencing on the Fourth day of December, 1985, and a like amount on the same day of each succeding month thereafter for Three Hundred and Sixty consecutive months.

....Upon payment of all monthly payments as set forth above, Seller shall deliver to buyer a General Warranty Deed to the above described real property....

...

Buyer and seller agree to execute a General Warranty Deed from Seller to Buyer and a Quit Claim Deed from Buyer to Seller upon execution of this agreement, and that Seller will hold said deeds for and during the life of this agreement. On full and faithful performance of all covenants and conditions by Buyer, Seller will deliver said General

Warranty Deed to Buyer. Should any breach of this agreement by Buyer result in the whole amount then remaining owed Seller becoming immediately due and payable, Buyer will pay said whole amount then remaining owed Seller within Ten (10) days. If Seller fails to pay said whole amount then remaining owed Seller within Ten (10) days, Buyer authorizes and appoints Seller as Buyer's attorney in fact to file for record the Quit Claim Deed from Buyer to Seller.

The Contract also contained the following provisions:

Buyer shall save and keep Seller free and harmless from any and all damage and liability occasioned by the use of said premises by any person or persons in any manner.

....Buyer agrees to maintain said premises in good repair, to permit no waste thereof, and to take the same care thereof that a prudent owner would take. If any municipal or governmental authority shall direct certain conditions to be corrected on the premises, it shall be the duty of the buyer to make such corrections at Buyer's own expense, upon receipt of notice by Buyer. If Buyer fails to make such repairs, replacements or corrections, Seller shall have the right to do so and the cost of same shall be added to the principal hereof...

(Emphasis added.)

The record establishes that defendant is the legal owner of the premises. A review of the "contract for deed" leads us to conclude that defendant recognized himself to be an owner and included provisions in the contract to protect himself from the consequences of certain city ordinances relating to the condition of the premises. Defendant had sufficient control of the premises to abate the nuisance. The finding by the trial court that defendant was the owner of the premises at the time of the offenses is supported by substantial evidence, thus his claim he is not an owner is without merit.

The conviction is supported by the substantial evidence in the record that a public nuisance was created on premises

owned by defendant, that defendant received notice of the ordinance violation from City, and that defendant did not remedy the situation.

Defendant raises various other points on appeal, some which have been preserved and some which have not. We have considered all of them and find them to be without merit.

Judgment affirmed.

s/ James R. Reinhard, Judge

Crandall, Jr., P.J., and Crist, J., concur.

No. 71335
No. ED 54637
In the Supreme Court of Missouri
January Session 1989

City of Webster Groves, Plaintiff-Respondent

vs. TRANSFER

Donald L. Erickson, Defendant-Appellant.

Now at this day, on consideration of Defendant-Appellant's application to transfer the above entitled cause from the Eastern District Court of Appeals, it is ordered that said application be, and the same is hereby denied.

STATE OF MISSOURI-SCT.

I, Thomas F. Simon, Clerk of the Supreme Court of the State of Missouri, certify that the foregoing is a full, true and complete transcript of the judgment of said Supreme Court, entered of record at the January Session thereof, 1989, and on the 14th day of February 1989, in the above entitled cause.

Given under my hand and seal of said Court, at the City of Jefferson City, this 14th day of February, 1989.

s/ Thomas F. Simon Clerk.
s/ Kathleen Blanton D.C.

Chapter 31. NUISANCES

ARTICLE 1. NUISANCES

Sec. 31.010. Definition and enumeration of nuisances.

Every act or thing done or made, permitted or allowed or continue on any property, public or private, by any person or corporation, its agents or servants, to the annoyance, detriment, damage or injury of the public, or which is injurious to the public health, safety or welfare is hereby declared to be a public nuisance and, as such, a misdemeanor punishable under Section 31.090.

The definition of public nuisance, as set forth above, shall include, but not by way of limitation, the following:

(a) The accumulation, upon any premises, lot or parcel of ground, or the discharge thereof upon any public street or private property, of stagnant or foul waste, water or liquids of any kind whatsoever.

(b) the maintanance of any outside toilet, privy, water closet or private vault which is kept in such condition as to emit any offensive, noxious or disagreeable odor.

(c) All carcasses of dead animals which the owner or keeper thereof shall permit to remain unburied for a period exceeding twelve (12) hours after death.

(d) The keeping of animals of any kind, domestic or wild, upon any public or private place or premises in such a manner or condition that same constitutes a hurt, injury, annoyance, or danger to the public or the residents in the vicinity.

(e) Placing, causing, keeping, maintaining or permitting trash, garbage, rubbish, junk, decaying vegetable or animal matter, ashes, debris, obnoxious or filthy substances, or any kind of waste materials upon any public or private property or premises in such a manner and extent as to render the same unsightly, unclean or unsafe.

(f) The burning, ignition, setting afire or maintenance of the burning of garbage, refuse, waste, trash, straw, paper, wood, leaves, weeds, grass clippings or other combustible materials or other substances of any nature or description is prohibited, except in incinerators constructed in accordance with St. Louis County air pollution control requirements and the building code of the City of Webster Groves.

(g) Ashpits or rubbish containers which are not emptied and contents removed from the premises when level full.

(h) Any unclean, stinking, foul, defective or filthy drain, ditch, tank or gutter or any leaking, broken slop, trash, or garbage box or ashpit, or receptacle of like character.

(i) The maintenance, upon public or private property, of dead or dying trees or tree limbs or branches, which by reason of their location, size, or state of deterioration, constitute a danger to the public health, safety or welfare, or the maintenance upon public or private property of trees which are infected with Dutch Elm or other contagious disease or blight, dangerous to persons, animals, or other trees or plant life.

(j) The parking or stopping of a motor vehicle in a front yard, as defined in the zoning ordinance of the City of Webster Groves, in any place other than a parking space, as defined in the zoning ordinance, or a durable surface including firmly placed and well-maintained rock, gravel or chat driveway.

(k) Allowing trailers, junkers, wrecks, or dilapidated or abandoned automobiles, i.e., owner cannot be determined, whether the same are operable or not, to remain on any street, alley, roadway, public driveway or public parking lot for a period of time in excess of twenty-four (24) hours.

31.080 Responsibility for Observance.

The owner of any premises, or his agent in control thereof, as well as the tenant or occupant of such premises, is charged with the duty of observing all of the provisions of this

Chapter. Any or all of such persons, together with any person causing or contributing to cause any nuisance, may be charged with violation thereof, and shall be equally liable.

31.090. Penalty for Violation.

Any person who maintains a nuisance, or fails to comply with a lawful order of abatement, or who interferes with any person duly engaged in inspection of premises or abatement of a nuisance, or posting of notice, or who in any other way violates any of the provisons of this Chapter shall, upon conviction thereof, be subject to a fine not exceeding the sum of One Hundred Dollars ($100.00), or to imprisonment in the City Jail for a term not exceeding thirty (30) days, or to both such fine and imprisonment. Each day of violation shall constitute a separate offense hereunder and may be punishable as such.

STATE OF MISSOURI)
) ss
COUNTY OF ST. LOUIS)

I, Mary Louise Miller, City Clerk of the City of Webster Grove, Missouri hereby certify that the foregoing is a true and correct copy of

Section 31.010 Definition and enumeration of nuisances.

Section 31.080 Responsibility for Observance.

Section 31.090 Penalty for Violation.

of Article I entitled Nuisances of Chapter 31 of the Code of the City of Webster Groves, Missouri Adopted and Effective January 15, 1963, Revised under dates of August, 1964; December 1969; January, 1974; January, 1976; July 1981; December, 1982, May 1987.

IN WITNESS WHEREOF, I have hereunto set my hand and the Seal of the City of Webster Groves, Missouri this 27th day of January 1988.

s/ Mary Louise Miller
CMC/AAE
CITY CLERK

PROOF OF SERVICE

I, Donald L. Erickson, hereby certify that on this 26th day of May, 1989, three copies of the revised Jurisdictional Statement in the above entitled case were mailed, first class postage prepaid, to David Coffman, 611 Olive, Suite 1400, St. Louis, MO 63101.

I further certify that all parties required to be served have been served.

_____

Donald L. Erickson